

Chapter 5

The Artists Are Doing Fine

How Will The Artists Get Paid?

“But how will the artists get paid?” is the single most frequent question we Pirates get when arguing for copyright reform to legalize file sharing.

Ten years ago, this was a very difficult question to answer, and few would have been confident that they knew if and how the cultural sector would survive financially in the new era. But today, we have more than a decade’s experience of a world where anybody who wants can download whatever they want for free, and where a large portion of the population routinely does.

We now know from experience that **the cultural sector is financially sustainable despite rampant p2p file sharing**. What may have appeared to be an insoluble problem a decade ago, has turned out not to be a problem at all, but in fact a huge opportunity for artists and creators, and a boon for sustainable cultural diversity.

Admittedly, it can feel a bit frustrating to get the question of how the artists will get paid after you have just explained how copyright enforcement is threatening fundamental rights. Should the question of whether we want to keep the right to private communication, due process, and proportionality in punishments really depend on whether it is profitable for artists or not?

But apart from that, it is a relevant question. We all want a society where culture flourishes, and we all want authors, musicians,

and other creative people to have a chance to make a living from their art. If it had been the case that there actually was a conflict between this and preserving fundamental rights, it would have been a problem that needed to be addressed, even if abolishing fundamental rights would not have been the proper answer.

As it happens, we can see that during the decade when file sharing grew exponentially, revenues have increased year by year for the both the cultural sector as a whole, and for each individual segment such as film, music, or computer games.

The biggest change has been within the music industry. For the past ten years, sales of recorded music have declined steeply, and the rise in digital music-sales have been scant compensation. But the music business has never been healthier.

In an in-depth article published in October 2010, business magazine [The Economist](#) wrote:

A surprising number of things are making money for artists and music firms, and others show great promise. The music business is not dying. But it is changing profoundly.

The longest, loudest boom is in live music. Between 1999 and 2009 concert-ticket sales in America tripled in value, from \$1.5 billion to \$4.6 billion. [...]

Rising income from live performance, merchandising, sponsorship, publishing, online streaming and emerging markets has come to counterbalance losses from declining CD sales. As a result, some musicians are singing a different tune. Last year a new group, the Featured Artists Coalition, objected to government plans to punish file-sharers by suspending their broadband connections. Its leaders, including established artists such as Billy Bragg and Annie Lennox, argue that file-sharing is a useful form of promotion.

When we look at the statistics, we see that the cultural sector is making as much money now as it did ten years ago (or slightly more,

due to the general increase in standard of living). People are spending as much money as ever on culture, regardless of the fact that they can download just about anything for free, and frequently do.

If they no longer spend the money on one thing, they spend it on something else. Music fans are spending just as much money as they used to on music, but since they are spending less on plastic discs, they are spending more on going to live concerts. This is bad news for the record companies, but it is great news for the artists, who get a bigger piece of the pie.

More money than ever before goes into the cultural sector, but sometimes through a different route.

It is quite natural that this should be the case, if we think about our own every-day experience of how an ordinary private economy works. When you get a salary every month, you first spend most of it on rent, food, bills, and other boring things. Then, if you're lucky, you have a little bit left that you can spend on entertainment, i.e.: culture.

If you no longer spend that money on buying plastic discs, you can afford to go and listen to some live music instead. You're going to spend the money one way or another, so someone in the cultural sector will get it.

It is still very difficult to make a living as an artist, it always has been, and it always will be. But at least it has become a little bit easier than it was before the Internet and p2p file sharing. In the music business, total revenues have increased slightly, while the big record companies are getting a smaller piece of the pie. This has left more money for the creative people who actually make the music (rather than just distribute it).

File sharing is not a problem that needs to be solved. It is something that is positive for both artists, consumers, and society as a whole. All we need to do now is to get copyright legislation in line with this new and positive reality.

By reforming copyright to legalize p2p file sharing that is done without direct commercial intent, we can put an end to the criminalization of an entire generation, while at the same time improving conditions for a vibrant cultural sector in Europe.

Studies On The Cultural Sector In The File Sharing Era

There is quite a lot of academic research on how the cultural sector, including the music business, has fared in the file sharing era. These studies make very interesting reading, and should be obligatory reading for all politicians involved in copyright policy making.

First, three studies on the music business in various member states:

- UK 2004 – 2008 : [Record companies lose, artists gain from file sharing](#)
- Sweden 2000 – 2008: [More Charts The Record Labels Don't Want You To See: Swedish Musicians Making More Money](#)
- Norway 1999 – 2009: [Artists Make More Money in File-Sharing Age Than Before It](#)

All three studies conclude that although record sales are down, revenues from live performances have increased dramatically, in a way that more than compensates for the drop in sales of recorded music.

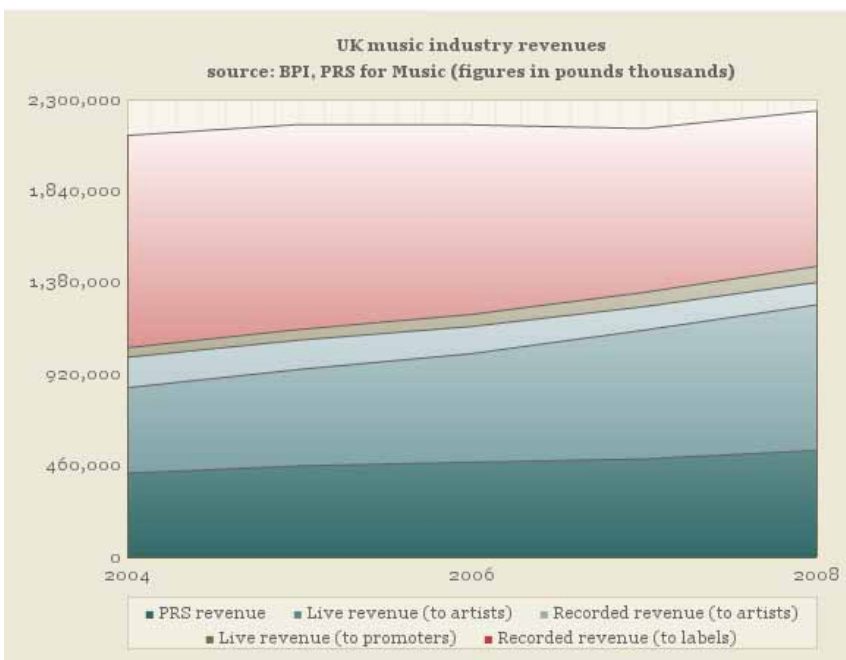
The Dutch study [Ups and downs – Economic and cultural effects of file sharing on music, film and games](#) (2009) takes a combined look at different cultural genres. It shows that between 1999 and 2007, revenues have increased for all of them, except music recordings. For the music industry, this study only looks at recorded music, and does not examine income for artists from other sources, such as concerts. This means that the study only confirms the negative trend for recorded music in line with the Swedish, Norwegian, and UK studies above, but leaves the part of the music sector that has made up for this outside the scope of the study.

A **Harvard study** from 2009 takes a look at the wider implications of file sharing for society, and finds that since the advent of file sharing, both the number of music albums and films released per year have increased. Canadian law professor Michael Geist summarizes the study under the heading [*Harvard Study Finds Weaker Copyright Protection Has Benefited Society*](#).

The **Hargreaves report** was commissioned by the UK government, and published in May 2011. It makes a strong call for evidence-based policy making in copyright matters, as opposed to having policy determined by the weight of lobbying.

Although the report is by no means a “Pirate Manifesto”, it makes several concrete proposals for policy changes that would at least go in the right direction.

The studies that have been mentioned here are summarized in a little more detail in the following sections.



UK 2004 - 2008:

Record Companies Lose, Artists Gain From File Sharing

On the previous page you will find [*"The graph the record industry doesn't want you to see"*](#) according to *Telegraph* editor Shane Richmond.

[Times Labs](#) has made an analysis of the music market in the UK for the last five years, based on data from the UK collecting society PRS.

In the graph, the top field is what the record companies make. The four other fields are what the artists make. The conclusion is very clear:

Record companies are making less, artists are making more, and the total amount is constant.

The reason record companies are making less money than they used to is probably due to file sharing. We Pirates happy to concede that. File sharing is a much better way to distribute music, so the service that the record companies provided is less and less in demand. It is only natural that they are in decline.

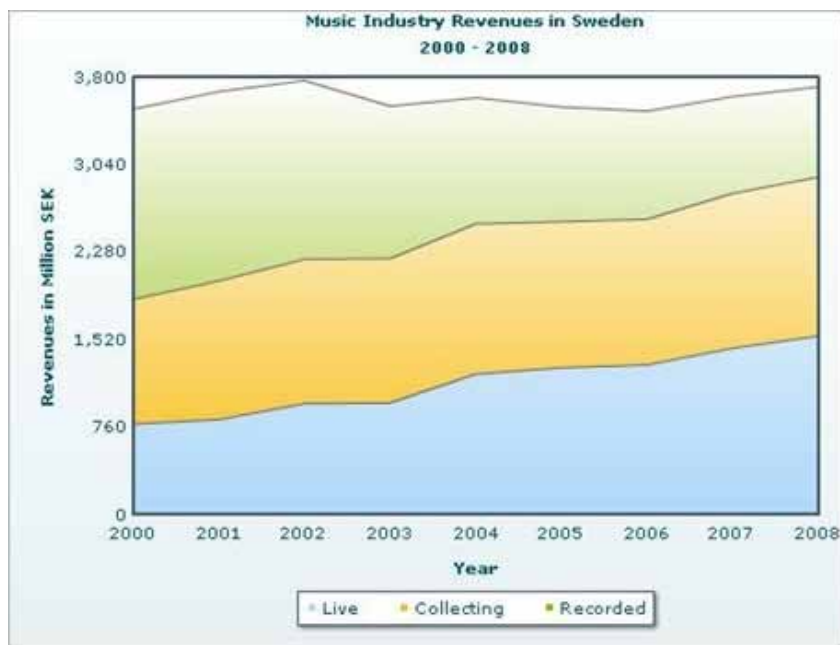
The best thing about this, is that the artists are making more money. People are spending just as much as they used to on music, but the record companies are getting less. Instead, the artists have increased their share to soak up the money that has become available.

This is an excellent development, and something we should embrace. File sharing should be legalized. The artists are the ones who have the most to gain.

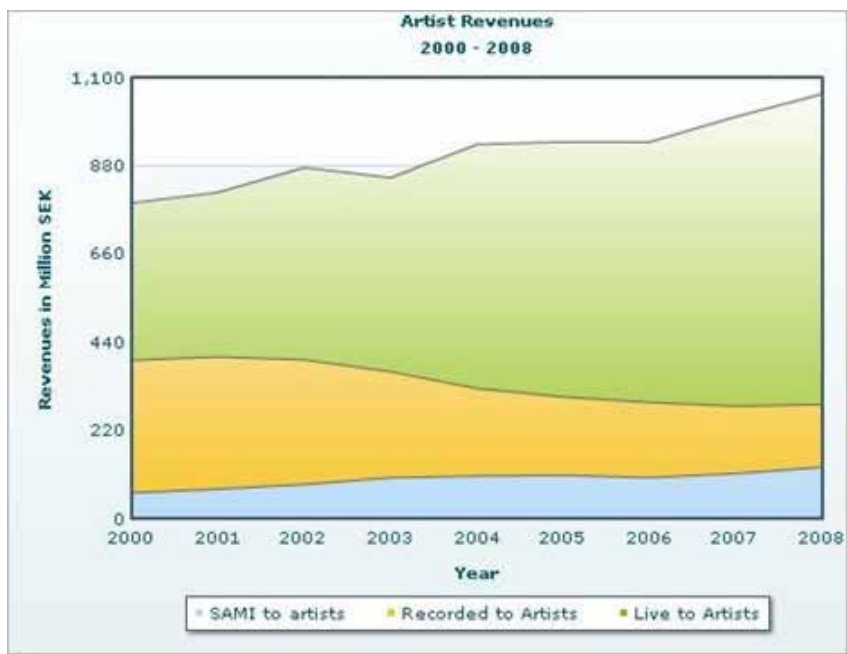
Sweden 2000 – 2008: More Charts The Record Labels Don't Want You To See: Swedish Musicians Making More Money

[Mike Masnick at Techdirt writes:](#)

We've already discussed the research on the UK music industry that shows both that [live revenue](#) is more than making up the decline in recorded revenue and that musicians themselves are making more revenue than ever before. Some people have suggested that this is a UK-only phenomenon, but a worldwide study [found the same thing](#) as well. And, now it looks like the same is being found in Sweden as well – home of The Pirate Bay, which we keep being told is destroying the industry. Swedish indie record label owner [Martin](#) sends in the news on data from the Swedish music industry, [which looks quite similar to the UK data](#). First, it shows that while there was a tiny dip in overall revenue, it's back up to being close to it's high, mostly because of a big growth in live music:



Basically, recorded revenues dropped. Collections stayed about the same, but live grew. More importantly, though, is the second chart, which shows the revenue for actual musicians. And that's going in one direction: up.



And yet, The Pirate Bay is destroying the ability to make music, right? Funny that the numbers don't seem to support that at all. Basically, these charts are showing the same thing that those other studies have shown. More music is being created. There is greater "discovery" of new music. There are greater revenue opportunities for musicians, and the only part of the business that appears to be suffering is the part that involves selling plastic discs. Yes, that sucks if your business was based on selling plastic discs, but for those who can adapt and adjust, there is more money than ever before to be made. That sorta goes against the claims that "piracy" is somehow destroying the industry, doesn't it?

Norway 1999 – 2009: Artists Make More Money In File Sharing Age Than Before It

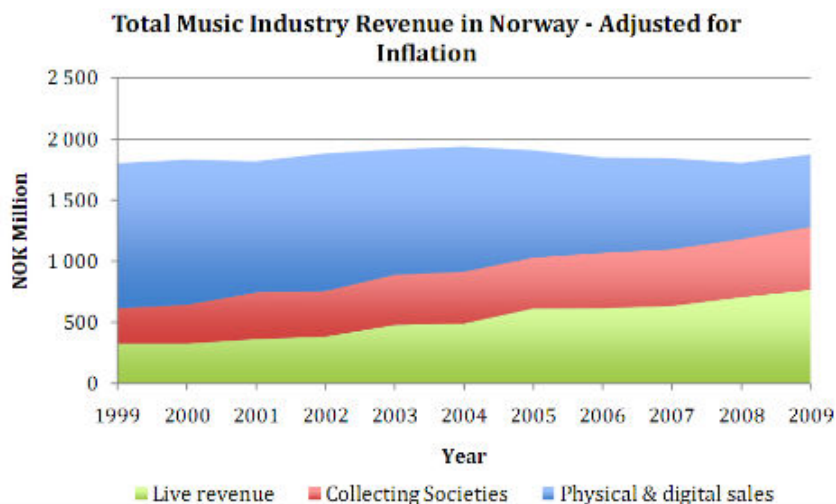
[Ernesto at Torrentfreak writes:](#)

An extensive study into the effect of digitalization on the music industry in Norway has shed an interesting light on the position of artists today, compared to 1999. While the music industry often talks about artists being on the brink of bankruptcy due to illicit file sharing, the study found that the number of artists as well as their average income has seen a major increase in the last decade.

Every other month a new study addressing the link between music piracy and music revenues surfaces, but only a few really stand out. One of the most elaborate and complete studies conducted in recent times is the master [thesis](#) of Norwegian School of Management students Anders Sørbo and Richard Bjerkøe.

In their thesis, the students take a detailed look at the different revenue streams of the music industry between 1999 and 2009. By doing so, they aim to answer the question of how the digitization of music – and the most common side effect, piracy – have changed the economic position of the Norwegian music industry and Norwegian artists. The results are striking.

After crunching the music industry's numbers the researchers found that total industry revenue grew from 1.4 billion Norwegian kronor in 1999 to 1.9 billion in 2009. After adjusting this figure for inflation this comes down to a 4% increase in revenues for the music industry in this time period. Admittedly, this is not much of a growth, but things get more interesting when the research zooms in on artist revenue.



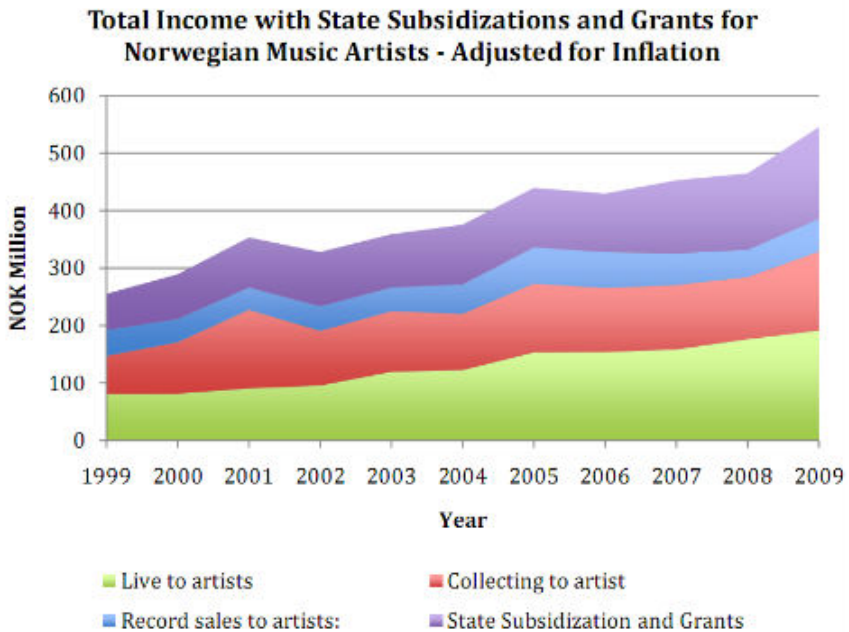
In the same period when the overall revenues of the industry grew by only 4%, the revenue for artists alone more than doubled with an increase of 114%. After an inflation adjustment, artist revenue went up from 255 million in 1999 to 545 million kroner in 2009.

Some of the growth can be attributed to the fact that the number of artists increased by 28% in the same time period. However, per artist the yearly income still saw a 66% increase from 80,000 to 133,000 kroner between 1999 and 2009. In conclusion, one could say that artists are far better off now than they were before the digitization of music started.

Aside from looking at the reported revenue, the researchers also polled the artists themselves to find out what their income sources are. Here, it was found that record sales have never been a large part of the annual revenue of artists. In 1999, 70% of the artists made less than 9% of their total income from record sales, and in 2009 this went down to 50%.

Live performances are the major source of income for most artists. 37% of Norwegian artists made more than 50% of their income from live performances in 2009, up from 25% in 1999. That

said, it has to be noted that only a few artists make a full living off their music, as most have other jobs aside.



In conclusion, the study refutes some of the most common misconceptions about the music industry in the digital age. Musicians are making more money than ever before. It is true that the revenues from record sales are dwindling, but that can be just as easily attributed to [iTunes as The Pirate Bay](#).

The bottom line is that the music industry as a whole is thriving. Record labels may report a dip in their income from record sales, but more money is going to artists at the same time. Is that really such a bad outcome? Well, that depends on who you're listening to.

Dutch Study: Ups And Downs – Economic And Cultural Effects Of File Sharing On Music, Film And Games (2009)

[Mike Masnick at Techdirt writes:](#)

[This study] is a very long (128 pages), but very thorough research report analyzing [pretty much everything having to do with file sharing in the Netherlands](#), commissioned by the government. It studies the economic angles, the legal angles, the cultural angles – and then compares the local results to international results.

While you might quibble with some of the methodology here or there, the overall conclusions of the report are pretty strong and clear: file sharing is not a problem for the overall industry. File sharing has, in fact, created a net benefit to the economy and society in both the short and long term, and that will likely continue.

The direct impact on sales of file sharing is minimal (though it depends on the category). In fact, the only areas actually in trouble right now may be the sale of plastic discs (CDs and DVDs), but much of the damage has nothing to do with file sharing, and there are indications that the “lost” money can be made up in other ways. The report recommends moving away from criminalizing user activities, and focusing instead on encouraging new business model development. A quick excerpt from the conclusions:

The short-term net welfare effects of file sharing are strongly positive given that it is practised by consumers whose demand is driven by a lack of purchasing power. To the extent that file sharing results in a decline in sales, we see a transfer of welfare from operators/producers to consumers, with no net welfare effect.

The market for CDs and the market for DVD/VHS rentals are the only sectors of the entertainment industry that are

suffering from a slump in sales. Whereas this may be attributed in part to file-sharing activity, file sharing is not solely to blame for the decline. The markets for DVDs and console games continued grow impressively after P2P services were introduced, and the cinema market showed sustained growth between 1999 and 2007. The total entertainment market has remained more or less constant, suggesting budget competition among the various products.

As long as the markets for games and films are on the rise or remain stable, there is little reason for concern that the diversity and accessibility of content is at stake. File sharing has significantly enhanced access to a wide and diverse range of products, albeit that access tends not to have the approval of the copyright holders.

In other words, pretty much everything that plenty of folks around here have been saying for a better part of a decade is pretty much true. File sharing isn't damaging – and, in fact, can represent a net economic improvement, and the business troubles faced by a few small parts of the industry are really business model challenges, rather than legal ones. The report makes it clear that focusing on legal solutions to dealing with file sharing is a big mistake that tends to only backfire and seems to be totally misdirected.

Harvard Study Finds Weaker Copyright Protection Has Benefited Society (2009)

Canadian law professor [Michael Geist wrote in 2009](#):

Economists Felix Oberholzer-Gee and Koleman Strumpf have just [released](#) a new Harvard Business School [working paper](#) called *File Sharing and Copyright* that raises some important points about file sharing, copyright, and the net benefits to society. The paper, which includes a helpful survey of the prior economic studies on the impact of file sharing, includes the following:

1. The data indicates that file sharing has not discouraged creativity, as the evidence shows significant increases in cultural production. The authors note that:

Overall production figures for the creative industries appear to be consistent with this view that file sharing has not discouraged artists and publishers. While album sales have generally fallen since 2000, the number of albums being created has exploded. In 2000, 35,516 albums were released. Seven years later, 79,695 albums (including 25,159 digital albums) were published (Nielsen SoundScan, 2008). Even if file sharing were the reason that sales have fallen, the new technology does not appear to have exacted a toll on the quantity of music produced. Obviously, it would be nice to adjust output for differences in quality, but we are not aware of any research that has tackled this question.

Similar trends can be seen in other creative industries. For example, the worldwide number of feature films produced each year has increased from 3,807 in 2003 to 4,989 in 2007 (Screen Digest, 2004 and 2008). Countries where film piracy is rampant have typically increased production. This is true in South Korea (80 to 124), India (877 to 1164), and China (140 to 402). During this period, U.S. feature film production has increased from 459 feature films in 2003 to 590 in 2007 (MPAA, 2007).

Given the increase in artistic production along with the greater public access conclude that “weaker copyright protection, it seems, has benefited society.” This is consistent with the authors’ view that weaker copyright is “unambiguously desirable if it does not lessen the incentives of artists and entertainment companies to produce new works.”

2. The paper takes on several longstanding myths about the economic effects of file sharing, noting that many downloaded songs do not represent a lost sale, some mashups may increase the market for the original work, and the entertainment industry

can still steer consumer attention to particular artists (which results in more sales and downloads).

3. The authors' point out that file sharing may not result in reduced incentives to create if the willingness to pay for "complements" increases. They point to rising income from performances or author speaking tours as obvious examples of income that may be enhanced through file sharing. In particular, they focus on a study that concluded that demands for concerts increased due to file sharing and that concert prices have steadily risen during the file sharing era. Moreover, the authors canvass the literature on the effects of file sharing on music sales, confirming that the "results are decidedly mixed."

The authors were one of the first to challenge the early claims about the effects of file sharing. Years later, many other economists have followed suit (including the [study](#) funded by Industry Canada). This latest paper does a nice job of expanding the discussion, by using the data to examine incentives for creativity and the effects on aggregate creator and industry income.

The Hargreaves Review Of UK IPR Policies (2011)

The UK government commissioned a review of its policies on copyright, patents and other intellectual property rights (IPR), which was presented in May 2011. The review was done by [Professor Ian Hargreaves](#), who holds the Chair of Digital Economy at the Cardiff School of Journalism, Media and Cultural Studies and Cardiff Business School.

The resulting [Hargreaves Review](#) (pdf, 130 pages) is very interesting reading.

One thing should be made absolutely clear: The Hargreaves Review is not a "Pirate Manifesto". It is written from a general pro-IPR perspective, and there are many cases where the Pirate Party disagrees with the proposals made, or thinks that they do not go far

enough. In particular, the Review offers no solution to the problem of illegal file sharing, other than the usual enforcement/education policy that has failed so spectacularly for at least a decade.

But if we leave that aside, there are many positive concrete recommendations in the Review that deserve to be taken seriously.

Evidence-based policy making is the first thing that the Review calls for. Already in the Foreword, it says:

We urge Government to ensure that in future, policy on Intellectual Property issues is constructed on the basis of evidence, rather than weight of lobbying...

This is indeed an area where there is much room for improvement. In the Executive Summary, the Hargreaves Review states:

The frequency of major reviews of IP (four in the last six years) indicates the shortcomings of the UK system. In the 1970s, the Banks Review deplored the lack of evidence to support policy judgments, as did the [Gowers Review](#) five years ago. Of the 54 recommendations advanced by Gowers, only 25 have been implemented. On copyright issues, lobbying on behalf of rights owners has been more persuasive to Ministers than economic impact assessments.

On copyright, the Review first of all advocates a "digital copyright exchange [that] will facilitate copyright licensing and realise the growth potential of creative industries".

Although it would cause no harm if somebody feels like trying to establish such an exchange under today's copyright legislation, it is very doubtful if this would be enough to solve the problem of easy pan-European licensing, and to lay a foundation for Europe as a Digital Single Market.

But there are other very constructive suggestions. The Review states in its Recommendations:

4. Orphan works. The Government should legislate to enable licensing of orphan works. This should establish extended collective licensing for mass licensing of orphan works, and a clearance procedure for use of individual works. In both cases, a work should only be treated as an orphan if it cannot be found by search of the databases involved in the proposed Digital Copyright Exchange.

5. Limits to copyright. Government should firmly resist over regulation of activities which do not prejudice the central objective of copyright, namely the provision of incentives to creators. Government should deliver copyright exceptions at national level to realise all the opportunities within the EU framework, including format shifting, parody, non-commercial research, and library archiving. The UK should also promote at EU level an exception to support text and data analytics. The UK should give a lead at EU level to develop a further copyright exception designed to build into the EU framework adaptability to new technologies. This would be designed to allow uses enabled by technology of works in ways which do not directly trade on the underlying creative and expressive purpose of the work. The Government should also legislate to ensure that these and other copyright exceptions are protected from override by contract.

All in all, the [Hargreaves Review](#) is well worth reading for anyone who takes an interest in IPR policy. Although the Review is written from a UK perspective, most of the reasoning is equally relevant at the EU level and in other member states.

But the most interesting question is of course to what extent the UK government will follow the Hargreaves recommendations. Unfortunately, only a couple of months after the Hargreaves report was published, we all got a sharp reminder of what the political reality still is. One of the strongest and most unequivocal recommendations of the Hargreaves report was not to extend the protection time for recordings from 50 to 70 years, since there would be a deadweight loss to society and no incentivising effect on the cultural sector.

So, what did the UK government do? In September 2011, four months after it got the Hargreaves report on its table, it pushed for a copyright term extension in the EU Council of Ministers, and got it through.

Having the studies is one thing, getting the policy-makers to read them and act upon them is another. But having access to the studies and knowing what they say brings a clear advantage to anybody interested in policy-making in the copyright field.